## IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE: REFCO INC. SECURITIES LITIGATION

05 Civ. 8626 (JSR)

07 MDL 1902 (JSR)

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## [PROPOSED] ORDER MODIFYING DISTRIBUTION PLAN

WHEREAS, counsel for Marc S. Kirschner, as Trustee of the Refco Private Actions Trust (the "Trustee"), moved this Court for an order modifying its Distribution Plan for the Net Settlement Funds in the above-captioned class action (the "Action"), and the Court having considered all the materials submitted in support of the motion, including the Trustee's Memorandum Of Law in Support Of The Trustee's Motion For an Order Modifying the Refco Securities Class Action Net Settlement Fund Distribution Plan To Provide For Distribution to the Refco Private Actions Trust of Certain Settlement Proceeds Assigned To The Private Actions Trust By Securities Action Class Members (the "Motion") and the Declaration of Sascha N. Rand in support thereof;

## NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- 1. This Order incorporates by reference the definitions in this Court's Order Approving Distribution Plan (the "Distribution Order") entered May 2, 2011, and all terms herein shall have the same meanings as set forth in the Distribution Order.
- 2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all settlement Class Members.
  - 3. The Motion is **GRANTED**. Accordingly,
  - a) The distributions of net settlement proceeds to Class Members who executed PAT election forms assigning settlement proceeds to the PAT shall be deferred.

- b) Notice shall be given to the relevant Assigning Class Members that the portion of the net settlement proceeds that are subject to the executed PAT election form will be directed to the PAT unless they file an objection to the re-direction within 30 days.
- c) Any objection to this Amendment of the Distribution Plan shall be sent to counsel for the PAT and to Lead Counsel in the Refco Securities Class Action within 30 days following the date of the notice. Counsel to the PAT will notify the Court of any objection within 3 business days of its receipt. All objections will be subject to resolution by this Court.
- d) With respect to Assigning Class Members who do not submit objections, the Garden City Group, Inc., the Court-approved claims administrator in the Refco Securities Class Action, shall distribute the portion of the settlement proceeds assigned by those Assigning Class Members to the PAT (excluding proceeds from the settlement with BAWAG, proceeds recovered on behalf of Refco bond purchasers, and proceeds recovered from victim restitution funds established by the Government) directly to the PAT following the 30 day notice and objection period.
- e) If any objection is filed, when each objection is finally resolved by this Court, the Garden City Group, Inc., the Court-approved claims administrator in the Refco Securities Class Action, shall distribute the portion of the settlement proceeds deemed by this Court to be validly assigned to the PAT, if any, directly to the PAT following the expiration of the time to appeal the order resolving the objection.
- f) To the extent that any claimant disputes the transfer of funds to the PAT after the transfer has been made, those disputes shall be resolved between the claimant

and the Trustee. Lead Counsel and The Garden City Group, Inc. shall have no responsibility for or involvement in the dispute or its resolution.

g) All provisions of the Distribution Order not affected by this Amendment shall remain unmodified.

SO ORDERED:

Dated: New York, NY

**6/2**, 2011

HONORABLE JED S. RAKOFF

UNITED STATES DISTRICT JUDGE